

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ELLIOT WINTER,)	
and,)	
ALEXANDRIA HURLBURT,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 4:21-cv-01046-JAR
FACEBOOK, INC.,)	
and,)	
TIKTOK INC., TIKTOK PTE. LTD.,)	
BYTEDANCE LTD., and BYTEDANCE)	
INC.,)	
and,)	
MONICA DOLAN,)	
)	
Defendants.)	

DEFENDANT FACEBOOK, INC.’S MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Facebook, Inc. (“Facebook”) respectfully moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. In support of this Motion, Facebook states as follows:

1. Elliot Winter and Alexandria Hurlburt (“Plaintiffs”) allege a single, civil cause of action against Facebook for gross negligence.
2. Plaintiffs’ claim against Facebook fails for two reasons. First, Plaintiffs fail to allege facts sufficient to support the claim, and it must be dismissed on this basis. Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Second, the claim is barred by Section 230(c)(1) of the Communications Decency Act (CDA), because it seeks to hold Facebook liable for content created by Facebook’s users. Claims such as Plaintiffs’, which seek to hold an online platform operator like Facebook

liable for allegedly defamatory content posted by another user, are precisely the type of claims that Section 230(c)(1) was intended to bar, and courts around the country have repeatedly and consistently rejected such claims at the pleading stage. Thus, Plaintiffs' claim is precluded from moving forward.

3. This Motion is supported by the pleadings in this matter and a supporting Memorandum of Law, which is incorporated herein by reference.

Respectfully submitted,

LEWIS RICE LLC

Dated: August 27, 2021

By: /s/ Evan Z. Reid
Evan Z. Reid, #51123MO
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
Telephone: 314 444 7889
Facsimile: 314 612 7889
ereid@lewisrice.com

Attorneys for Defendant Facebook, Inc.